

Comments of the
GOVERNMENT OF THE UNITED STATES OF AMERICA
on the
JAPAN FAIR TRADE COMMISSION'S

Draft

ANTIMONOPOLY ACT GUIDELINES CONCERNING
THE ACTIVITIES OF FIRMS AND TRADE ASSOCIATIONS
IN RELATION TO PUBLIC BIDS

May 20, 1994

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I. INTRODUCTION

The Government of the United States of America ("USG") respectfully submits these comments in response to the invitation of the Japan Fair Trade Commission ("JFTC") concerning its draft "Antimonopoly Act Guidelines Concerning the Activities of Firms and Trade Associations in Relation to Public Bids" (the "draft Guidelines").

The JFTC is issuing these draft Guidelines as part of the broader reform of the bidding system for public works that was announced in January 1994. We hope that these reforms mark the beginning of a fundamental change in the attitude of both the Japanese government and the Japanese public concerning the toleration of bid rigging and of the *dango* system in government procurement.

The USG welcomes the JFTC's effort to issue antimonopoly guidelines for activities related to public procurements. The 1984 Guidelines Concerning Activities of Trade Associations in the Construction Industry in Relation to Public Works have long been a symbol of the effective immunity of that sector from the Antimonopoly Act, and their revocation is long overdue.

We have reviewed these draft guidelines with four broad goals in mind. First, we believe that these guidelines should be drafted in a way that contributes to an overall strengthening of antimonopoly enforcement in Japan. Perceptions that the Japanese Government tolerates, facilitates or even encourages bid rigging and other anticompetitive practices in the public bid process undermines the overall credibility of the JFTC and of the Antimonopoly Act itself, as well as of Japan's public procurement system. In this context, we are particularly troubled by the statement in the cover paper to the guidelines that "the establishment of the Guidelines would not mean any change of existing interpretation and enforcement of the Antimonopoly Act." These guidelines, if they are to have any meaning, should signal a tougher JFTC stance against bid rigging, especially given the previous applicability of the weak 1984 Guidelines.

Second, we believe that these guidelines should adequately address anticompetitive practices that may exclude U.S. and other foreign companies from fair access to the public procurement market in Japan. We have received a number of complaints from

U.S. companies about boycotts and other practices by Japanese firms aimed at making it impossible for our companies to participate in the Japanese government procurement market. Third, we hope that the Guidelines will contribute significantly to the deterrence of bid rigging on contracts let by U.S. Government entities in Japan, where the USG has been the frequent victim of bid rigging practices. In this context, we appreciate the explicit applicability of the Guidelines to procurements by foreign-government agencies. Fourth, we believe that these guidelines should make the application of the Antimonopoly Act to activities related to public bids as clear as possible, so that firms will have a clear understanding of practices that should be avoided and practices that do not raise antimonopoly concerns.

With these goals in mind, we respectfully offer the following general and specific comments on the draft Guidelines, and provide additional comments on other issues relating to public procurement.

II. GENERAL COMMENTS

1. Vigorous Enforcement and Stringent Penalties Are Necessary

The draft Guidelines (page 2) state that the guidelines "aim to prevent bid-rigging and to promote lawful activities on the part of firms and trade associations." We are in full agreement with that laudable goal. However, guidelines alone will not deter or remedy bid rigging and other conduct that violates the Antimonopoly Act. Firms and associations will be deterred from engaging in this otherwise profitable conduct only if they observe a vigorous enforcement policy by the JFTC and a significant likelihood of being subjected to serious penalties when their unlawful conduct is discovered. The increased number of JFTC recommendations (14) against bid rigging in JFY 1993 was a positive development in this direction.

However, more needs to be done, both by the JFTC and by other government agencies. From the JFTC, a much more active criminal accusation stance is needed, particularly with respect to bid rigging activities. The surcharge system also needs to be improved in the bid rigging area, so that co-conspirators who play a role in the dango scheme by refraining from bidding or by submitting "complementary" bids, but who do not win many contracts (at least in that particular dango group), will be subject to significant surcharges. The establishment of a well-publicized system to enable persons to report bid rigging activities while keeping their identity confidential would also contribute to the effort to root out unlawful behavior in the

public bid area. Changes in the law to create a workable private remedy system are also essential if firms engaged in bid rigging are to be held accountable for the monetary damages they inflict on government agencies and taxpayers.

A much greater commitment by other Japanese government agencies to uncovering and preventing unlawful bidding practices is also crucial. These agencies need to work closely and cooperatively with the JFTC in finding ways to make bid rigging more difficult to carry out, and in detecting bid rigging when it does occur. The institution of a system that provides awards to procurement officials who report suspected bid rigging or other antimonopoly violations and that protects reporting officials from recriminations would greatly improve the ability of the Japanese Government to uncover and act against anticompetitive practices. All bidders should be required to certify that their bids were arrived at independently, subject to criminal penalties for false certifications. Firms found to have engaged in bid rigging should be subject to strict administrative sanctions, including nationwide suspensions from bidding for a significant period of time (at least if adequate competition would remain after the suspensions.)

2. Bidding-Related Practices in Public Bids for All Goods and Services Should be Addressed

We understand that these guidelines are intended to address anticompetitive practices in all government procurements, not just those involving construction services. Therefore, it is important that the guidelines address activities that may not be common in the construction industry, but might occur with respect to bidding practices in other industries. Thus, these guidelines should be drafted so as to create a set of specific, yet broadly applicable, rules on how firms and trade associations should behave with respect to participation in every stage of the public bid process.

3. The Scope of the Guidelines Should be Broadened

The Guidelines are aimed at bidding practices with respect to public bids, which includes procurements conducted by the national government, local governments, "or other similar entities" (which the draft Guidelines define as including public corporations, local public corporations, foreign-government agencies and international organizations.) We appreciate, in particular, the stated applicability of the guidelines to procurements conducted by foreign-government agencies since, as noted above, the USG has frequently been a victim of dango practices at many of its facilities in Japan. We believe that procurements conducted by third sector entities and quasi-

governmental entities, including regulated utilities, should be specifically identified as falling within the scope of these guidelines.

We also recommend that the scope of the guidelines be broadened to cover procurements by private firms as well. There should be no difference in the applicability of the Antimonopoly Act to bid rigging activities directed at government procurement or at private procurement. The mechanisms used to implement and enforce such schemes are also likely to be the same. Therefore, we see no reason why these Guidelines should not also apply to situations where private firms are the contracting entity. We suggest, therefore, that the scope of the Guidelines be broadened to cover both public and private bids or, if that is not possible at this late date, that the Guidelines state that the same approach will apply to activities related to bidding on private procurements as well.

4. The Guidelines Should State Clearly that Administrative Guidance or Other Administrative Involvement is No Defense

The Guidelines should make clear that neither administrative guidance to firms to engage in *dango* activities, nor the implicit or explicit complicity of government officials in a bid rigging scheme, will provide a defense to JFTC prosecution under the Antimonopoly Act. There are a number of cases brought by the JFTC, including the oil cartel cases, that could be used to illustrate this point. To this end, the Guidelines should discuss various hypotheticals showing that the direct or indirect involvement or knowledge of government officials in a bid rigging scheme, including their presence or participation in trade association meetings, study groups or advisory committees, does not provide protection from antimonopoly enforcement action. For example, the Guidelines should point out that communications with government officials, where such officials are acting as the "hub" in a "hub and spoke conspiracy," could form the basis of a finding of an unlawful conspiracy among private firms.

5. Procuring Agencies Should Be Advised Not to Disclose Competitively-Sensitive Information

The draft Guidelines appropriately address the exchange of competitively-sensitive information among competitors. (We provide more specific comments on these matters in the next section of our paper.) We agree with the position implied by section 1-5 of the draft Guidelines that a firm must be free to provide information about itself to the contracting agency upon request of such agency. However, if the contracting agency then discloses the information to other potential bidders, either

directly or by making the information publicly available, this information could be used to facilitate a bid rigging conspiracy.

Therefore, we strongly recommend that the JFTC advise procuring agencies that, with respect to any competitively-sensitive information that they receive, they should ensure the non-disclosure of such information, as required by the National Civil Servant Law.

6. The Specific Cases Should be More Focussed

There is considerable confusion about the specific cases cited throughout the Guidelines. As currently drafted, they create the impression that only activities that are the same as the conduct found unlawful in the cited specific cases would be deemed an antimonopoly violation by the JFTC.

We believe that such specific case descriptions are generally helpful in demonstrating that the JFTC has already been actively prosecuting bid rigging activities and in giving some "real life" context to the otherwise somewhat abstract Guidelines. However, we would suggest that the JFTC use the specific cases more as illustrations of particular principles contained in the text of the Guidelines. For example, in section 1-1 (predetermining an expected bid winner), the guidelines should list some examples of ways in which dango groups may predetermine bid winners, e.g. a bid rotation system, a point system, agreements to refrain from bidding on specified procurements, submission of non-competitive or "complementary" bids, and then use the specific cases as "real life" illustrations of each unlawful activity. We also suggest that the JFTC make clear that the specific cases are only illustrative, and that other conduct that has the same result will also be deemed to violate the Antimonopoly Act.

7. A Prior Consultation Mechanism Should be Established

In light of the difficulty that some firms and associations may have in analyzing the competitive and legal implications of certain activities related to the public bid process, such as certain information collection and dissemination activities, we recommend that the JFTC indicate in the Guidelines that firms or associations may make use of the JFTC's prior-consultation procedure to obtain advice on whether proposed activities raise antimonopoly problems. The 1991 Distribution Systems and Business Practices Guidelines, as well as the 1979 Trade Association Guidelines, set out in an appendix the procedures for obtaining prior consultations. Presumably this same procedure could be used for activities related to public bids, and should be included in these Guidelines.

III. SPECIFIC COMMENTS

1. Amplify the Prohibition of Exclusionary Activities in the Public Bid Market

- o Although the draft Guidelines, in section 1-1-5, refer to boycotts and discriminatory treatment of firms that fail to abide by the outcome of the bid rigging discussions, the Guidelines fail to address boycotts and other exclusionary conduct aimed at keeping non-members of the conspiracy from being able to submit bids to the contracting agency.
- o Bid rigging conspiracies will frequently include some explicit or implicit sanctions to deter firms from cheating on the cartel agreement.
 - Threats of retaliation are often economic, including boycotts, discriminatory treatment and monetary fines imposed by the trade association.
 - Sometimes the threats of retaliation may even include physical violence.
- o The Guidelines correctly indicate that these enforcement mechanisms are themselves unlawful under the Antimonopoly Act and will be prosecuted.
- o However, we strongly urge that a new section of the Guidelines be added to address exclusionary practices aimed at preventing non-members of the conspiracy from successfully submitting bids or from otherwise entering the market.
- o We have received reports from American construction firms of not being able to submit bids in Japan because they were not able to find any subcontractors willing to work for them.
- o Other reports involve Japanese firms that were willing to work as subcontractors for American construction companies only after ensuring that their workers could wear disguises that would prevent other Japanese firms from knowing the identity of the subcontractor.
- o Another area of competitive concern is discrimination by conspirators (and companies related to them or subject to their influence) against non-members of the conspiracy by, for example, providing them with unreasonable and discriminatory estimates of the cost of materials and other inputs necessary for performance of the government contract.

- o We therefore strongly recommend that the JFTC add a new section to the Guidelines that describes boycott and other exclusionary or discriminatory practices in connection with the public bid process that are considered unlawful, including the examples cited above.

2. Bid Rigging Should be Unlawful Even If Unsuccessful

- o Section 1(1) defines conduct of predetermining a bid winner as conduct "that is engaged in to specify the awardee in a bid and that ensures that the contract is in fact awarded to the specified awardee" (emphasis added.)
- o This definition implies that if, for instance, a non-conspirator firm obtains the contract by underbidding the specified awardee, the JFTC would not consider the actions of the *dango* group to have been unlawful.
- o We recommend that the Guidelines be clarified to indicate that the JFTC will take enforcement action even if the specified awardee is not in fact awarded the contract.
- o Even if the predetermined awardee does not actually obtain the contract, the actions of the *dango* group still would have substantially restrained competition, and likely resulted in a higher price to the procuring entity.
- o Economic studies have shown that the more bidders that actually participate in a procurement, the lower the bid price will generally be. For example, a recent Canadian study found that increasing the number of bidders from 3 to 4 can result in savings of up to 18 percent.

3. The Treatment of Information Exchanges Should be Strengthened

A. Information on firms' bidding interest or designation, or on firms' past designations or contract awards

- o The Guidelines are ambiguous in their treatment of information exchanges that facilitate bid rigging activities.
- o Point A under section 1-1 states that the conduct in section 1-1-1 (exchanging information concerning interest in being awarded contract) and in section 1-1-2 (collating and offering information regarding a firm's past designation and contract award record) is "suspected to be violation." At the same time, Point A is within the part of subsection 1(2) entitled "Conduct in Principle Constituting Violation,"

which implies that sections 1-1-1 and 1-1-2 are in that category.

- o The same ambiguity also arises in section 2-1-1, where the sentence before 2-1-1 states that the conduct "is further suspected to be violation," but all of section 2-1 is under the "in Principle Constituting Violation" category.
- o Another inconsistency arises in section 1-2 (reporting the fact of designation and planned participation in bids). Although section 1-2 appears to cover the identical conduct seemingly prohibited in section 1-1-1, section 1-2 is under the category "Conduct Suspected to be Violation."
- o These ambiguities should be eliminated.
- o We recommend that the conduct addressed in sections 1-1-1, 1-1-2 and 1-2 be included in the "in Principle Constituting Violation" category. (This applies equally to the equivalent sections in 4(2)). Similarly, we recommend that the exchange of information concerning bid prices, as set out in section 2-1-1, be included in the "in Principle Constituting Violation" category.
- o We see no pro-competitive justification for firms exchanging information of this type. The concerted disclosure of this information will facilitate the operation of unlawful bid rigging schemes by providing a mechanism, as it has often done in the past in Japan, to predetermine bid winners.
- o There is also some confusion with respect to section 3-2 (and section 4-5) which permits publishing "rough aggregate" of past public procurements awarded. This seems somewhat inconsistent with section 1-1-2, which prohibits exchange of information about individual firm's past record of contract awards.
- o The key difference in these sections may be the requirement in section 3-2 that the information be a "rough aggregate." If so, it would be helpful if more detail were given on what would and would not constitute a "rough aggregate."

B. Collection and Exchange of Other Competitively-Sensitive Information

- o We are concerned that sections 4-4, 4-14 and 4-15 may unduly permit the exchange of competitively-sensitive information.
- o For example, section 4-4 permits the exchange of information concerning trends in labor wages and prices of materials.

- o This wage and input price information, however, could be used by firms to agree upon a common cost formula for their bids, a result that would facilitate bid rigging.
- o Sections 4-14 and 4-15, by contrast, are drafted so broadly as to raise the possibility of complete circumvention of the goals of these Guidelines. For instance, section 4-14 permits concerted conduct to propagate "general knowledge relevant to the attitude of participation in bids."
- o This language would apparently permit discussion between firms on their "attitude" towards submitting a bid on a particular contract.
- o Similarly, section 4-15 permits concerted conduct of "general enlightenment" on the necessity of fulfilling contracts and studying "technical trends" and content of the bid system. Again, these terms are so vague as to invite firms to use these sections as a cover for unlawful bidding activities.
- o We recommend, therefore, that the language of these three sections be tightened up considerably, with the goal being to ensure that firms understand that they cannot use these sections to accomplish anticompetitive ends.

4. Address Anticompetitive Activities in the Government Estimate Process More Fully

- o The draft Guidelines (sections 2-2 and 4-3) state that the exchange of information concerning price levels that has been requested by the contracting agency for purposes of computing the government estimate price (yoteikakaku) falls within the "Suspected to be Violation" category. The Introduction also states that the Guidelines may apply to "activities in connection with the submission of estimates to the contract awarding agency." These references to the government estimate process are helpful.
- o However, we believe that the Guidelines should clearly indicate that pre-bid exchanges of information concerning government estimate prices fall within the "in Principle Constituting Violation" category.
- o The process by which procuring agencies obtain price information so that they can calculate the government estimate, or maximum acceptable bid, can be subject to anticompetitive practices. The following examples should be more fully addressed by the Guidelines.

- o First, the exchange among association members of price estimate information submitted to the contracting agency could be used to facilitate a bid rigging scheme on that contract, both by providing the firms with information about each other's previous prices and by providing the firms with information on what the maximum acceptable bid will be.
- o Second, firms may concertedly try to manipulate the price information that is provided to the contracting agency so as to increase the maximum acceptable bid.
- o Each of these situations may lead to higher costs incurred by the contracting agency, as well as to exclusion problems for firms not privy to the information.
- o The Guidelines should also state that if a trade association collects such data upon the specific request of the contracting agency, it will be considered in the "not constituting violation" category only where the association keeps both the firm-specific and aggregate price information confidential, preferably by retaining the services of an independent third party to collect and aggregate the data for submission to the contracting agency.

5. Include Clear Guidance on the Prohibition Against Unjust Low Price Sales in Public Procurements

- o Notwithstanding that several of the U.S.-Japan sectoral procurement agreements include a provision stating that the JFTC will enforce the Antimonopoly Act vigorously against unjust low price sales, the draft Guidelines fail even to mention this important topic.
- o Moreover, to the best of our knowledge, the JFTC has not issued any statement of its enforcement policy with respect to unjust low price sales generally or with respect to public bids specifically.
- o In view of the infamous 1-yen bids for computer systems, and the strong interest of the foreign business community in ensuring that foreign firms are not excluded from the public procurement market by predatory or unjust low bidding practices, we recommend that the JFTC add a section of the guidelines to address these practices.
- o Unjust low pricing in the public bid context can be a problem in a least two situations.

- First, if the government is the only purchaser of a particular product -- such as certain satellites, for example -- then unjust low bids that exclude a competitor will result in higher costs to the government once the competitor is driven out of the market.
- Second, if there is both a private market and a government market, and entry barriers in the private market are high (for example, because it may be difficult to enter at the minimum efficient scale, or because keiretsu or other relationships effectively prevent new entrants from using the existing distribution channels), then unjust low bids in the government procurement market could prevent new entrants from gaining a base in the Japanese market from which they might seek to enter the private market.
- o For these reasons, we believe that the JFTC should add a section to the Guidelines indicating that it will take enforcement action against unjust low bids in the public bid market and explaining the criteria that will be examined by the JFTC in determining whether the prohibition against unjust low price sales has been violated.

6. Clarify Application of Antimonopoly Act to Joint Venturing and Sub-Contracting

- o The treatment of subcontracting and joint venturing, and the exchange of information concerning those activities, is ambiguous in the draft Guidelines and should, we believe, be further clarified.
- o On the one hand, as the draft Guidelines recognize in sections 1-1-4 and 1-3, subcontract arrangements and joint ventures can be used by bid rigging conspiracies as a method of eliminating competition and distributing the benefits of the cartel to all of its members. On the other hand, subcontracting and joint venturing can sometimes be procompetitive by permitting a more efficient allocation of work or by spreading the risks associated with a particular contract. Sections 4-8 and 4-9 appear to be based on this latter recognition.
- o We suggest that the JFTC set out more clearly the factors that it will examine when determining whether joint ventures and subcontract arrangements in the context of public bids violate the Antimonopoly Act. Some of the factors that we believe should be examined are:

- the intent of the parties;
 - whether the subcontract or joint venture arrangement is part of a pattern of conduct by the association or its members;
 - whether the arrangements are disclosed in the bid or kept secret;
 - whether the parties to the subcontract or joint venture arrangement were the most likely or qualified bidders;
 - whether the companies could have performed the work independently;
 - whether the arrangement was entered into because of some real and substantial efficiencies; and
 - whether there was sufficient bidding competition notwithstanding the subcontract or joint venture arrangement.
- o We also believe that the provisions of section 4-8 with respect to exchanging information to facilitate joint ventures should be clarified and made stronger.
- Section 4-8 permits associations of small- and medium-scale firms to exchange information of "past objective facts concerning combination of partners in a joint ventures" for purposes of qualifying as a permanent joint venture. It would be helpful to clarify further the types of information that would be permissible under this standard.
 - We are also unclear as to why section 4-8 is limited to an association of small- and medium-scale firms. Further explanation of why large-scale firms should not participate in this information exchange would be useful. In fact, we believe that an explanation of the justification for treating conduct by small- and medium-scale firms differently from conduct by large-scale firms wherever it occurs in the Guidelines would be helpful, since it is not obvious why such differential antimonopoly treatment is warranted.
7. Other Administrative and Legal Sanctions and Remedies Should be Included
- o In the "Measures Against Violation" section of the draft Guidelines, not all sanctions and remedies that may be applied to persons, firms or associations found to have engaged in unlawful bid rigging activities are specified.

- o The USG believes that all relevant sanctions and remedies should be set out, so that potential violators have a full appreciation of the risks they will incur if they engage in unlawful bidding activities.
- o This list should include:
 - the bid rigging provisions of the Criminal Code (Section 96-3), with their potential prison sentences for individuals engaged in bid rigging;
 - suspension from bidding, and other administrative sanctions;
 - Antimonopoly Act or civil tort law damage compensation remedies. The USG's compensation requests for the damages incurred by bid rigging activities at its military bases in Japan might be cited in this context.
- o This section should also recite the GOJ's policy, as stated in the SII Second Annual Report, that it will consider seeking compensation for damages it suffers as a result of bid rigging activities on government procurements.

IV. OTHER COMMENTS RELATING TO PUBLIC PROCUREMENT THAT ARE OUTSIDE THE SCOPE OF THE PROPOSED GUIDELINES

We understand that the purpose of issuing these Guidelines is to inform the business community of considerations guiding the JFTC's enforcement of the Antimonopoly Act with respect to bid rigging and other anticompetitive practices relating to public bids. However, if the public procurement system is to operate in a fair and competitive manner, we believe that the Government of Japan must take several other steps. We believe that the measures described below, while not within JFTC authority or directly related to JFTC enforcement policy, are crucial to the workability and fairness of the public procurement system in Japan and should be implemented.

1. Procuring Agencies Should Augment Their Role in Detecting and Deterring Unlawful Bidding Practices

- o As noted in our General Comments section, we believe that other Japanese Government agencies must play a more proactive role in preventing and uncovering unlawful bidding practices.

- o In this context, we believe that the Government of Japan, in order to detect and prevent unlawful bidding practices, should direct procuring agencies to:
 - assist the JFTC fully during investigations into allegations of bid rigging and other anticompetitive practices relating to public bids;
 - promote the use by procurement officials of a confidential ("hotline") procedure to report possible bid rigging and other unlawful practices;
 - suspend a procurement whenever there are any credible allegations of bid rigging or other unlawful activities;
 - declare void bids that have been submitted as part of a bid rigging conspiracy or other unlawful activity, annul contracts awarded to parties found to have engaged in bid rigging or other unlawful practices, and retender the procurement;
 - bar firms determined to have engaged in bid rigging or other unlawful practices from further participation in that procurement or a re-tender of the procurement; and
 - suspend firms determined to have engaged in bid rigging or other unlawful practices from participating in any public sector procurement conducted in Japan for a significant period of time.
- o We believe that to promote additional deterrence, procuring agencies should publicly announce all administrative actions, including suspensions, that they take against firms that have engaged in bid rigging or other unlawful practices. Such announcements should include:
 - the names of the individuals, firms and other co-conspirators;
 - the estimated monetary damages incurred by the procuring agency;
 - a full descriptions of the administrative measures taken against such individuals and firms; and
 - the measures taken by the firms found to have participated in the unlawful activity to correct the violation, compensate the government and prevent future misconduct.

2. Procuring Agencies Should Ensure Transparency in the Development of Government Estimate Prices

- o When procuring agencies do not possess adequate information to develop government estimate prices, they should conduct market research to determine the actual prices for comparable goods and services sold in the private sector.
- o Where procuring agencies contract with third parties to develop government estimate prices, the agencies should use open, competitive, and transparent contracting procedures to ensure that the third party has the necessary expertise to conduct the work.
- o Procuring agencies should prohibit any third party that develops a government estimate price, and any party related to it, from participating in the procurement for which that government estimate price was developed, and from disclosing any information related to the development of the government estimate price to any firm or entity other than the contracting agency.

3. Procuring Agencies Should Ensure Fairness in the Development of Technical Specifications

- o The draft Guidelines do not refer to potential problems that may arise when firms and trade associations participate in the development of the specifications for a particular procurement. We believe that these potential problems need to be addressed by the Government of Japan.
- o It is our long-standing position that the development of impartial technical specifications is essential for promoting greater competition in procurements.
- o It is also our position that, with limited exceptions, firms that participate in a procurement should not be allowed to assist in the development of technical specifications for that procurement.
- o When contracting agencies do not possess the necessary expertise to develop technical specifications for public procurements, we believe that the contracting agencies should contract out such specification development work to firms and other entities using open and competitive procedures.

- o In addition, we recommend that the Government of Japan take the necessary measures to ensure that firms and other entities that provide assistance to a contracting agency in the development of the specifications for a procurement do not disclose any information with respect to such specifications to any firm or entity other than the contracting agency.

V. CONCLUSIONS

The USG appreciates being given the opportunity to comment on these draft Guidelines. We remain available to consult with the JFTC and the Government of Japan about these comments, or to provide any other assistance that the JFTC may find useful with respect to preparing the final Guidelines. If there are any questions about these comments, please contact Stuart M. Chemtob, Special Counsel for International Trade, Antitrust Division, U.S. Department of Justice.